

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Parts 222 and 229**

[Docket No. FRA-1999-6439, Notice No. 8]

RIN 2130-AA71

**Use of Locomotive Horns at Highway-Rail Grade Crossings**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Interim final rule.

**SUMMARY:** FRA is issuing rules to require that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. The rules also provide for an exception to the above requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or safety measures fully compensate for the absence of the warning provided by the horn. This rule is required by law.

**DATES:** The effective date is December 18, 2004.

*Written Comments:* Comments must be received by February 17, 2004. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

*Public Hearing:* FRA intends to hold a public hearing in Washington, DC to allow interested parties the opportunity for oral comment on issues addressed in the interim final rule. The date and specific location of the hearing will be set forth in a forthcoming notice that will be published in the **Federal Register** and posted on FRA's Web site (<http://www.fra.dot.gov>).

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FRA-1999-6439 by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal e-Rulemaking Portal: Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6299); or Kathryn Shelton or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6038).

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**1. Background**

On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 2230) addressing the use of locomotive horns at public highway-rail grade crossings. This rulemaking was mandated by Public Law 103-440, which added section 20153 to title 49 of the United States Code. The statute requires the Secretary of Transportation (whose authority in this area has been delegated to the Federal Railroad Administrator (49 CFR 1.49), to issue regulations to require the use of locomotive horns at public grade crossings, but gives the agency the authority to make reasonable exceptions.

In accordance with the Administrative Procedure Act (5 U.S.C. 553), FRA solicited written comments from the public. By the close of the public comment period on May 26, 2000, almost 3,000 comments had been filed with the agency regarding this rule and its associated Draft Environmental Impact Statement. As is FRA's practice, FRA held the public docket open for late filed comments and considered them to the extent possible.

Because the NPRM was the subject of substantial and wide-ranging public interest, FRA took unprecedented steps to ensure that the views of the affected public would be heard and considered in development of this interim final rule. FRA conducted a series of public hearings throughout the United States in which local citizens, local and State officials, and members of the U.S. House of Representatives and Senate testified. Twelve hearings were held (Washington, DC; Fort Lauderdale, Florida; Pendleton, Oregon; San Bernadino, California; Chicago, Illinois (four hearings in the greater Chicago